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DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Conduct Restoration Planning and to
Prepare a Draft Damage Assessment Restoration Plan
Environmental Assessment for the Omega 707 Air Tanker Crash
of May 18, 2011 at Mugu Lagoon, Naval Base Ventura County
Point Mugu, CA

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 1006 of the Oil Pollution Act
of 1990 (OPA), 33 U.S.C. 2701 et seq., and Section
(102)(2)(c) of the National Environmental Policy Act of
1969 and the regulations implemented by the Council on
Environmental Quality (40 CFR parts 1500-1508), the
Department of the Navy (DoN), acting through Commander Navy

Region Southwest (CNRSW), and in coordination with the U.S. Department of Interior Fish and Wildlife Service (USFWS), and the California Department of Fish and Wildlife Office of Spill Prevention and Response (CDFW-OSPR), announces its intent to conduct restoration planning and to prepare a draft Damage Assessment Restoration Plan (DARP) Environmental Assessment (EA) for the Omega 707 Air Tanker Crash of May 18, 2011 at Mugu Lagoon, Naval Base Ventura County (NBVC) Point Mugu, CA.

On May 18, 2011, a Boeing K707 aerial refueling tanker, carrying approximately 10,000 gallons of jet fuel, operated by Omega Air Inc., crashed during take-off on Runway 21 into Mugu Lagoon at the end of Point Mugu Taxiway Alpha at NBVC Point Mugu. Spill response crews protected most of the lagoon and were able to limit crash impacts to an area of approximately 79 acres of wetlands. The crash scattered debris and different portions of the plane, scoured tracks into the marsh, and left the remaining fuselage partially buried in mudflats. A Unified Command (UC) was instituted immediately following the incident that consisted of staff from NBVC Point Mugu, CDFW-OSPR, U.S. Coast Guard, USFWS, and aircraft owner Omega Air, Inc. The UC oversaw the

emergency response and spill containment debris clean-up operations.

The natural resources trustees (Trustees) under OPA are the CNRSW, USFWS and CDFW-OSPR and are acting in accordance with the natural resources authorities provided by the OPA, the Federal Water Pollution Control Act (FWPCA), the Clean Water Act (CWA), and other applicable Federal laws and regulations including the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR 300.600-300.615), the Natural Resource Damage Assessment (NRDA) regulations applicable to OPA (15 CFR part 990), and the DoN Environmental Readiness Program Manual (OPNAVINST 5090.1D). USFWS and CDFW-OSPR are co-Trustees in this response, with CNRSW serving as lead Trustee. As owner and operator of the crashed plane from which the fire and release occurred, the Trustees identified Omega Air, Inc. as the Responsible Party (RP). The Trustees have coordinated with representatives of the RP on NRDA activities.

The Trustees began the pre-assessment phase of the NRDA in accordance with 15 CFR 990.40, to determine if they had jurisdiction to pursue restoration under OPA, and, if so,

whether it was appropriate to do so. During the pre-assessment phase, the Trustees collected and analyzed the following:

1. Data reasonably expected to be necessary to make a determination of jurisdiction or a determination to conduct restoration planning;

2. Ephemeral data; and/or

3. Information needed to design or implement anticipated emergency restoration and/or assessment as part of the restoration planning phase.

The NRDA regulations provide that the Trustees are to prepare a Notice of Intent to Conduct Restoration Planning (Notice) if they determine certain conditions have been met, and if they decide to quantify the injuries to natural resources and to develop a restoration plan. This Notice announces, pursuant to 15 CFR 990.44, that the Trustees, having collected and analyzed data, intend to proceed with restoration planning actions to address injuries to natural resources resulting from the crash. The purpose of this restoration planning effort is to further evaluate injuries

to natural resources and services and to use that information to determine the need for, type of, and scale of compensatory restoration actions.

DATES AND ADDRESSES: The Trustees invite and encourage Federal, State, and local agencies, American Indian tribes, and interested persons to provide written comments on this Notice and the proposed DARP EA to ensure that all relevant issues are considered. All written comments may be submitted through the point of contact listed below and must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to ensure they become part of the official record. Written comments or questions on this Notice and the scope of the proposed DARP EA and its process, requests for inclusion on the mailing list, and requests for copies of any documents associated with the DARP EA should be directed to: Navy Region Southwest, Attention: Ms. Deb McKay, Code N40, Pt Mugu Omega Air Tanker Crash Spill, 937 North Harbor Drive, Box 81, San Diego, CA 92132.

FOR FURTHER INFORMATION CONTACT: Navy Region Southwest, Attention: Ms. Deb McKay, Code N40, Pt Mugu Omega Air Tanker Crash Spill, 937 North Harbor Drive, Box 81, San

Diego, CA 92132, Phone: 619-532-2284, or
deborah.mckay@navy.mil.

SUPPLEMENTARY INFORMATION:

Authorities. Pursuant to section 1006 of the OPA, Federal and State Trustees for natural resources are authorized to:

1. Assess natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge and response activities, and

2. Develop and implement a plan for restoration of such injured resources. The Federal Trustees are designated pursuant to the NCP and Executive Order 12777 (Implementation of Section 311 of the FWPCA of October 18, 1972, as amended, and the OPA). State Trustees for California are designated pursuant to the NCP and the "Governor's Designation of State Natural Resource Trustees under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the OPA, and California Health and Safety Code" § 25352(c), dated October 5, 2007.

Determination of Jurisdiction. The Trustees have determined that impacts from the air tanker crash on May 18, 2011, and subsequent fire and oil spill into wetlands at NBVC Point Mugu require restoration planning pursuant to 15 CFR 990.44. After the crash event, the Trustees conducted impact minimization and clean up measures to protect the rest of Mugu Lagoon but injuries still occurred to the natural resources and services of the site. Therefore, a NRDA restoration planning effort is required to evaluate those injuries and to determine appropriate restoration actions.

The Trustees have determined that they have jurisdiction to pursue restoration planning pursuant to the OPA in order to resolve liability for injuries to natural resources and services. Specifically, the Trustees have determined pursuant to 15 CFR 990.41:

1. The crash of the aircraft resulted in a discharge of oil into and upon navigable waters of the U.S. and such occurrence constitutes an "Incident" within the meaning of 15 CFR 990.30;

2. The Incident was not permitted pursuant to Federal, State, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act (43 U.S.C. 1651 et seq.); and

3. Natural resources under the trusteeship of the Trustees have been injured as a result of the Incident.

Using information gathered since the crash, during the response, and the NRDA initiation phase, the Trustees have determined that the crash injured natural resources under the trusteeship of the Trustees. The air tanker crash and subsequent fire, oil spill, and cleanup action is known to have impacted aquatic organisms, vegetation, birds, wildlife, geologic resources, and hydrology. The incident exposed these resources to oil, metals, and contaminants of potential concern. The response use of heavy equipment to remove debris and sandbags to contain the spill also caused injury to the natural resources and services of the site. As a result of this incident, injuries to the site's natural resources and their services were observed and documented. Therefore, the Trustees have jurisdiction to pursue restoration under the OPA.

Determination to Conduct Restoration Planning. The NRDA regulations under OPA, provide that the Trustees are to prepare a Notice if they determine certain conditions have been met, and if they decide to quantify the injuries to natural resources and to develop a restoration plan. Accordingly, the Trustees have determined, pursuant to 15 CFR 990.42(a), that:

1. As stated above, injuries have resulted from the incident on May 18, 2011.

2. Response actions did not address all injuries resulting from the incident to the extent that restoration would not be necessary. Although response actions were initiated soon after the spill, the nature of the incident (fire, oil spill, and physical disturbance) and the sensitivity of the environment precluded the complete prevention of injuries to natural resources. Injured natural resources may return to baseline, but interim losses of services provided by these natural resources have occurred, and will continue until resources return to baseline health/condition.

3. Feasible primary and compensatory restoration actions exist to address injuries and lost human uses resulting from the incident. In preparation for restoration planning, the Trustees have begun to compile a list of restoration projects that could potentially be implemented to compensate for interim losses resulting from the incident. All potential restoration sites would be located within the bounds of NBVC Point Mugu and would involve construction projects to enhance the services of existing wetlands.

The Trustees have the tools and procedures to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources. Among the available procedures are computer modeled injury assessments; field and laboratory study of geology and sediment, plants, wildlife, water quality, hydrologic resources; as well as additional literature searches. Appropriate procedures such as these will be used to determine the extent of injury to natural resources and their services, and Habitat Equivalency Analysis will be used to determine the appropriate compensation for those injuries.

During the restoration planning phase, the Trustees will evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft Damage Assessment and Restoration Plan for public review and comment.

Administrative Record. The Trustees have opened an Administrative Record (Record) in compliance with 15 CFR 990.45. The Record will include documents considered by the Trustees during the preassessment, assessment, and restoration planning phases of the NRDA performed in connection with the crash. The Record will be augmented with additional information over the course of the NRDA process. The Record is available in accordance with the Freedom of Information Act, by contacting: Navy Region Southwest, Attention: Ms. Deb McKay, Code N40, Pt Mugu Omega Air Tanker Crash Spill, 937 North Harbor Drive, Box 81, San Diego, CA 92132, Phone: 619-532-2284, or deborah.mckay@navy.mil

Dated: July 10, 2015.

N. A. Hagerty-Ford,
Commander,
Judge Advocate General's Corps,

U.S. Navy,
Federal Register Liaison Officer.

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